



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP

Docket No. 3784-00
30 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C.1552
(b) BUPERSMAN

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, removal of two marks of desertion from her record.

2. The Board, consisting of Ms. Humberd, and Messrs. Tew and Silberman reviewed Petitioner's allegations of error and injustice on 28 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 26 September 1979 for four years at age 24. She completed recruit training and aviation storekeeper "A" school, and changed her rate to AKAR (E-1) on 31 March 1980.

d. Petitioner served without incident until 18 April 1980 when she was reported in an unauthorized absence (UA) status. She was declared a deserter on 18 May 1980 and remained absent until she was apprehended by civil authorities on 5 August 1980.

e. On 18 August 1980, Petitioner received nonjudicial punishment for being absent in desertion for 109 days, from 18 April to 5 August 1980. Punishment imposed was 30 days of correctional custody and forfeitures of \$224.40 per month for two months.

f. On 16 September 1980, Petitioner was declared a deserter again due to probable cause since she had recently returned from a lengthy absence. Petitioner was apprehended by civil authorities on 19 September 1980.

g. On 2 October 1980 Petitioner was convicted by summary court-martial of being UA for the foregoing three days. She was sentenced to 20 days of hard labor without confinement, 30 days of restriction, and a forfeiture of \$334.20.

h. On 8 October 1980 Petitioner was notified that discharge under honorable conditions was being considered by reason of convenience of the government due to being an administrative burden. She was advised of her procedural rights, declined to consult with counsel or make a statement in her own behalf, and did not object to the discharge. On 10 October 1980 she received a general discharge by reason of "burden to command due to substandard performance or inability to adapt to military service." Petitioner's military behavior and overall traits averages were 2.2 and 2.73, respectively.

i. Reference (b) provides that commanding officers shall remove as an erroneous entry the mark of desertion from the service record of any enlisted member who was tried and convicted or acquitted of unauthorized absence, or who subsequently had been charged with unauthorized absence. The mark of desertion is removed by submission of a Court Memorandum (NavPers 601-7R).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board notes that the record clearly reflects Petitioner was charged and found guilty of desertion at NJP on 18 August 1980. As a result, the Board finds no basis for removing the mark of desertion resulting from the 109 day period of absence. However, the Board notes that the mark of desertion on 16 September 1980 is clearly erroneous since she was convicted only of UA. Therefore, the Board concludes that the mark of desertion for the period 16-19 September 1980 should be removed from the record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the mark of desertion for the period 16-19 September 1980.

b. That no further relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

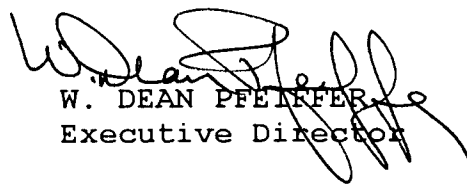
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of

Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director